



INDUSTRY CIRCULAR

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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PUBLIC LAW 96-598

To Proprietors of Distilled Spirits Plants

PURPOSE: The purpose of this Industry Circular is to advise proprietors of distilled spirits plants of the passage of a new law affecting taxes paid on distilled spirits products.

BACKGROUND: On December 24, 1980, the President signed Public Law 96-598, 96th Cong., 2d Sess., which provides a tax credit for certain wine and flavors contained in distilled spirits products. The law also permits non-bulk spirits bottled for industrial purposes to be transferred in bond between the bonded premises of distilled spirits plants. The text of § 6 of Public Law 96-598 is as follows:

6. PRESERVING EXISTING TAX STATUS OF WINE AND FLAVORS USED IN THE PRODUCTION OF DISTILLED SPIRITS.

(a) **ALLOWANCE OF CREDIT.**—Subpart A of part I of subchapter A of chapter 51 of the Internal Revenue Code of 1954 (relating to distilled spirits) is amended by adding at the end thereof the following new section:

SEC. 5010. CREDIT FOR WINE CONTENT AND FOR FLAVORS CONTENT.

“(a) **ALLOWANCE OF CREDIT.**—

“(1) **WINE CONTENT.**—On each proof gallon of the wine content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to the excess of—

“(A) \$10.50, over

“(B) the rate of tax which would be imposed on the wine under section 5041(b) but for its removal to bonded premises.

“(2) **FLAVORS CONTENT.**—On each proof gallon of the flavors content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to \$10.50.

“(3) **FRACTIONAL PART OF PROOF GALLON.**—In the case of any fractional part of a proof gallon of the wine content, or of the flavors content, of distilled spirits, a proportionate credit shall be allowed.

“(b) **TIME FOR DETERMINING AND ALLOWING CREDIT.**—

“(1) **IN GENERAL.**—The credit allowable by subsection (a)—

“(A) shall be determined at the same time the tax is determined under section 5006 (for 7652) on the distilled spirits containing the wine or flavors, and

“(B) shall be allowable at the time the tax imposed by section 5001 (or 7652) on such distilled spirits is payable as if the credit allowable by this section constituted a reduction in the rate of tax.

“(2) **DETERMINATION OF CONTENT IN THE CASE OF IMPORTS.**—For purposes of this section, the wine content, and the flavors content, of imported distilled spirits shall be established by such chemical analysis, certification, or other methods as may be set forth in regulations prescribed by the Secretary.

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) **WINE CONTENT.**—

“(A) **IN GENERAL.**—The term ‘wine content’ means alcohol derived from wine.

“(B) **WINE.**—The term ‘wine’—

“(1) means wine on which tax would be imposed by paragraph (1), (2), or (3) of section 5041(b) but for its removal to bonded premises, and

“(11) does not include any substance which has been subject to distillation at a distilled spirits plant after receipt in bond.

“(2) **FLAVORS CONTENT.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term ‘flavors content’ means alcohol derived from flavors of a type

for which drawback is allowable under section 5134.

“(B) **EXCEPTIONS.**—The term ‘flavors content’ does not include—

“(1) alcohol derived from flavors made at a distilled spirits plant, and

“(11) in the case of any distilled spirits product, alcohol derived from flavors to the extent such alcohol exceeds (on a proof gallon basis) 2¼ percent of the finished product.”

(b) **CLERICAL AMENDMENT.**—The table of sections for such subpart A of part I of subchapter A of chapter 51 of such Code is amended by adding at the end thereof the following new item:

“Sec. 5010. Credit for wine content and for flavors content.”

(c) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) shall take effect on January 1, 1980.

(d) **TRANSFERS OF ALCOHOL.**—Section 5212 of the Internal Revenue Code of 1954 (relating to the transfer of spirits in bond) is amended by adding at the end thereof the following new sentence: “The provisions of this section restricting transfers to bulk distilled spirits shall not apply to alcohol bottled under the provisions of section 5235 which is to be withdrawn for industrial purposes.”

Amend the title so as to read: “An Act to amend the Internal Revenue Code of 1954 with respect to excise tax refunds in the case of certain uses of tread rubber, and for other purposes.”

IMPLEMENTATION: Regulations to implement Public Law 96-598 will be published in the FEDERAL REGISTER in the Spring of 1981. However, proprietors of distilled spirits plants may take advantage of the provisions of the new law immediately, using the procedures suggested below.

APPLICATION OF 26 U.S.C. 6423: The conditions of 26 U.S.C. 6423 relating to the ultimate burden of the tax apply to retroactive credits for wine and flavors content. The proprietor will be required to comply with 27 CFR Part 170 Subpart E for retroactive credits for wine and flavors content for distilled spirits tax determined between January 1, 1980 and the time when the proprietor begins to take the credit on current taxable withdrawals. However, 27 CFR Part 170 Subpart E does not apply to wine and flavors content credit taken at the time of tax determination since an excess payment of tax does not result in such a case. Therefore, ATF encourages proprietors to begin taking the credit immediately using the procedures suggested below.

SUGGESTED PROCEDURES FOR TAKING CREDIT FOR WINE AND FLAVORS CONTENT AT THE TIME OF TAX DETERMINATION: In order to ensure that the credit is properly computed and recorded prior to publication of implementing regulations, we recommend that proprietors of distilled spirits plants use the procedures suggested below.

A. Since the tax on wine is imposed on wine gallons, it is necessary to convert the appropriate wine tax to a proof gallon basis taking into account the percent alcohol by volume of the wine at the time of its addition to the spirits. A credit rate per proof gallon for a batch of a distilled spirits product may be computed using the following equation:

CREDIT RATE PER PROOF GALLON EQUALS:

$$\frac{[W(\$10.50 - \frac{R}{P})] + (F \times \$10.50)}{B}$$

W = The number of proof gallons derived from wine contained in the batch of finished product, expressed to the nearest tenth of a proof gallon.

- R = The wine tax rate imposed by 26 U.S.C. 5041(b)(1), (b)(2), or (b)(3), as applicable.
- P = The proof of the wine, at the time of its addition to the spirits, divided by 100.
- F = The proof gallons of alcohol derived from flavors contained in the batch of finished product, expressed to the nearest tenth of a proof gallon, or $.025 \times B$, whichever is less.
- B = The total proof gallons of all ingredients in the batch, expressed to the nearest tenth of a proof gallon.

- (1) Unless the "P" is identical for each wine contained in a product at the time the wine is added to the product, a separate calculation shall be added to the numerator of the equation for each wine contained in the product, using the portion of the equation contained in the brackets.
- (2) The credit rate per proof gallon shall be expressed to the nearest whole cent.

PLEASE NOTE: The use of wine is limited to still wine received in bond from a bonded wine cellar. The wine may not be subjected to distillation after its receipt at the distilled spirits plant (26 U.S.C. 5010(c)(1)). The use of flavors is limited to flavors of a type which would be eligible for nonbeverage drawback under 26 U.S.C. 5134, excluding flavors made at a distilled spirits plant. The credit for flavors content is limited to 2 1/2% (on a proof gallon basis) of the finished product (26 U.S.C. 5010(c)(2)).

The following is an example of the use of the equation.

BATCH RECORD:

Spirits	2249.1	p.g.
Wine (14% alcohol by volume)	634.2	
Wine (19% alcohol by volume)	387.6	
Flavors	63.7	
	<hr/>	
	3334.6	p.g.

$$\begin{aligned} & [634.2 (\$10.50 - \frac{\$.17}{.28})] \\ & + [387.6 (\$10.50 - \frac{\$.67}{.38})] \\ & + (63.7 \times \$10.50) \end{aligned}$$

\$10,328.71

÷ 3334.6 p.g.

= \$3.10 Credit Rate Per Proof Gallon

B. Since the proof of the wine is an essential element in computing the credit, we recommend that proprietors record the proof of the wine on the batch record. Also, since the batch record is the source of information required to compute the credit rate, we recommend that proprietors record the credit rate on the batch record.

C. Since the credit is allowed at the time of tax determination, we recommend that the total credit for each product, computed to the nearest whole cent, and the credit rate per proof gallon for each product be recorded on the record of tax determination or on a record traceable to it. Since the credit rate per proof gallon is computed from the batch record, the record of tax determination should also be traceable to the batch record from which the credit is computed.

D. It should be emphasized that the credit is allowed at the time of tax determination as reduction in the rate of tax to be paid on the return. The recording of the credit should begin when spirits are first mixed with wines or flavors. The computation of the credit rate is based on all ingredients regardless of the number of processing steps and batch records involved.

E. Since distilled spirits on which the credit is allowed may be (1) returned to bonded premises, (2) subject to disaster or casualty claims, (3) used in

the manufacture of a nonbeverage product, or (4) exported with benefit of drawback, we recommend that proprietors record case serial numbers on records of tax determination.

F. If the above suggested procedures are used, proprietors will be able to compute and record the credit correctly.

SUGGESTED PROCEDURES FOR TRANSFER IN BOND OF SPIRITS BOTTLED FOR INDUSTRIAL PURPOSES: Non-bulk distilled spirits bottled in accordance with 27 CFR 19.410 may be transferred in bond between distilled spirits plants using the procedures prescribed in 27 CFR 19.505 -- ~~19.510~~ for transfers of bulk spirits.

INQUIRIES: If you have any questions about this Industry Circular, please direct them to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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Director